



**NEVADA COMMISSION ON ETHICS  
EXECUTIVE DIRECTOR'S REPORT AND RECOMMENDATION  
REGARDING JUST AND SUFFICIENT CAUSE**

REQUEST FOR OPINION NO. 04-78

SUBJECT: CHIP MAXFIELD, MEMBER  
CLARK COUNTY COMMISSION

**A. JURISDICTION:**

Commissioner Maxfield is a public officer as defined by NRS 281.4365. As such, the Commission has jurisdiction over the complaint.

**B. REPORT OF INVESTIGATIVE ACTIVITIES:**

- Reviewed Request for Opinion 04-78 (see Tab B)
- Reviewed subject's response dated November 15, 2004 (see Tab C)
- Reviewed prior Commission Opinions regarding NRS 281.501 (see Tab D)
- Performed corporate ownership and holdings searches.
- Reviewed minutes from July 2, 2003 meeting of the Clark County Commission.

**C. RECOMMENDATIONS:**

Based on investigative activities, it is recommended the panel find that just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion in this matter relating to the provisions of:

- NRS 281.501(2);
- NRS 281.501(3); and
- NRS 281.501(4).

### **SPECIFIC REASONS:**

No allegations or credible evidence of any fact exists that amounts to or supports a violation by any public officer of the above provisions of NRS Chapter 281.

### **D. SUMMARY OF REQUEST FOR OPINION:**

The complaint alleges violations of NRS 281.501(2), NRS 281.501(3), and NRS 281.501(4) by Chip Maxfield, a member of the Clark County Commission. The complaint specifically alleges Commissioner Maxfield violated the Ethics in Government Law by voting on a zone-change application (ZC-0513-03) on July 2, 2003, when he should have abstained from the vote due to his relationship with the applicant. To wit, Commissioner Maxfield's son was engaged to marry the daughter of zoning applicant Jay Bingham. According to the complaint, Mr. Bingham is a manager, member, and 5 percent owner of Juliet Properties, the company which planned to build a condominium unit upon approval of the zone-change. The complaint suggests the relationship between Commissioner Maxfield and his future in-laws was sufficient to require his abstention pursuant to NRS 281.501.

### **E. SUMMARY OF SUBJECT'S RESPONSE:**

In his response, Commissioner Maxfield denied any violation of NRS 281.501, and provides the following in support of this assertion:

1. At the time of the vote on ZC-0513-03, Commissioner Maxfield publicly disclosed his son was engaged to be married to the daughter of Mr. Jay Bingham, the applicant on the zone-change;
2. He sought legal advice from the Clark County District Attorney's Office regarding whether the Nevada Ethics in Government Law required him to abstain from voting on the zone-change item;
3. He was advised and also believed he was not required to abstain from voting because he was not related to Mr. Bingham by "blood, adoption, marriage within the third degree of consanguinity or affinity;" and
4. Due to this legal advice, he voted on the zone-change matter in his official capacity as Clark County Commissioner.

## **F. PERTINENT STATUTES AND REGULATIONS:**

### **NRS 281.501 Additional standards: Voting by public officers; disclosures required of public officers and authorized to file written disclosure.**

\* \* \* \* \*

2. Except as otherwise provided in subsection 3, in addition to the requirements of the code of ethical standards, a public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in his situation would be materially affected by:

- (a) His acceptance of a gift or loan;
- (b) His pecuniary interest; or
- (c) His commitment in a private capacity to the interests of others.

It must be presumed that the independence of judgment of a reasonable person would not be materially affected by his pecuniary interest or his commitment in a private capacity to the interests of others where the resulting benefit or detriment accruing to him or to the other persons whose interests to which the member is committed in a private capacity is not greater than that accruing to any other member of the general business, profession, occupation or group. The presumption set forth in this subsection does not affect the applicability of the requirements set forth in subsection 4 relating to the disclosure of the pecuniary interest or commitment in a private capacity to the interests of others.

\* \* \* \* \*

3. In a county whose population is 400,000 or more, a member of a county or city planning commission shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in his situation would be materially affected by:

- (a) His acceptance of a gift or loan;
- (b) His direct pecuniary interest; or
- (c) His commitment to a member of his household or a person who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity.

It must be presumed that the independence of judgment of a reasonable person would not be materially affected by his direct pecuniary interest or his commitment described in paragraph (c) where the resulting benefit or detriment accruing to him or to the other persons whose interests to which the member is committed is not greater than that accruing to any other member of the general business, profession, occupation or group. The presumption set forth in this subsection does not affect the applicability of the requirements set forth in subsection 4 relating to the disclosure of the direct pecuniary interest or commitment.

\* \* \* \* \*

4. A public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon any matter:

- (a) Regarding which he has accepted a gift or loan;
- (b) Which would reasonably be affected by his commitment in a private capacity to the interest of others; or
- (c) In which he has a pecuniary interest, without disclosing sufficient information concerning the gift, loan, commitment or interest to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the person to whom he has a commitment, or upon his interest.

Except as otherwise provided in subsection 6, such a disclosure must be made at the time the matter is considered. If the officer or employee is a member of a body which makes decisions, he shall make the disclosure in public to the Chairman and other members of the body. If the officer or employee is not a member of such a body and holds an appointive office, he shall make the disclosure to the supervisory head of his organization or, if he holds an elective office, to the general public in the area from which he is elected. This subsection does not require a public officer to disclose any campaign contributions that the public officer reported pursuant to NRS 294A.120 or 294A.125 in a timely manner.

\* \* \* \* \*

8. As used in this section, “commitment in a private capacity to the interests of others” means a commitment to a person;
- a. Who is a member of his household;
  - b. Who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity;
  - c. Who employs him or a member of his household;
  - d. With whom he has a substantial and continuing business relationship; or
  - e. Any other commitment or relationship that is substantially similar to a commitment or relationship described in this subsection.

## **G. RESULTS OF INVESTIGATION:**

### ***Overview of the Woodbury opinion:***

In *NCOE Opinion 99-56* (hereinafter the *Woodbury opinion*), the Commission provided guidance in determining whether a public officer has violated the provisions of NRS 281.501. The Commission opined a public officer must disclose sufficient facts concerning his private commitments such that the public is aware and protected from a decision which may be based on these private commitments or interests, rather than on the public interest. The *Woodbury opinion* counsels the public officer to provide a sufficiently detailed disclosure so as to protect the public from personal or private interests. The Commission further opined that, in some instances, a detailed disclosure is sufficient to evince the appropriate separation between public and private interests so as

to firmly protect the public interest. However, under other circumstances, such a disclosure will not satisfactorily protect the public from a decision which is based on the public officer's private interests. Under these circumstances, the Commission ruled that abstention from voting on the matter will also be required pursuant to NRS 281.501(2).

In deciding whether to abstain from voting, the public officer must determine whether the independence of judgment of a reasonable person in his situation would be *materially* affected by his pecuniary interest or commitment in a private capacity to the interest of others. The Commission opined that this determination must be made by the public officer on a case-by-case basis and with the advice of legal counsel.

***Allegations regarding NRS 281.501(2):***

On July 2, 2003, Commissioner Maxfield disclosed the details of his commitment in a private capacity to the interest of others. He publicly disclosed his son's relationship with the Bingham family such that the public was aware of this commitment. Prior to voting on this matter, Commissioner Maxfield sought legal advice from the Clark County District Attorney's office regarding whether NRS 281.501 required him to abstain from voting. Deputy District Attorney Robert T. Warhola provided Commissioner Maxfield with an oral opinion instructing him that the Ethics in Government Law did not require abstention under these circumstances. Mr. Warhola later memorialized the reasons for his opinion in a written memorandum to Commissioner Maxfield (see Tab C). Commissioner Maxfield followed the advice of the District Attorney's office and voted on the zone change.

Although Commissioner Maxfield sought and followed legal advice in accordance with the *Woodbury* opinion, this alone does not preclude a violation of NRS 281.501. While it is wise to seek legal advice, such advice is not a safe harbor. Accordingly, the decision to vote on a matter must ultimately be made by the public officer as instructed in *Woodbury*. Whether a violation of NRS 281.501(2) occurred turns on whether the independence of judgment of a reasonable person in his situation would be *materially* affected by his commitment in a private capacity as defined by NRS 281.501(8).

The complaint asserts Commissioner Maxfield's son might someday acquire a benefit from his father's vote and supports this by arguing that when Mr. Bingham dies, the ownership interest in Mr. Bingham's business might flow to his daughter by way of an inheritance. Consequently, Commissioner Maxfield's son will also inherit because of his future marriage to Mr. Bingham's daughter. There is no evidence within the record that, at the time of the vote, Commissioner Maxfield's son held any financial interest in Mr. Bingham's company. It is merely argued that the Commissioner's son might someday acquire an interest in this business. Because there was no direct interest accruing to Commissioner Maxfield's son, it would be presumed the independence of judgment of a reasonable person would not be materially affected under these circumstances. The speculative future interest by marriage asserted in the complaint is insufficient to support a violation of this statute by virtue of the father-son/son-fiancée relationships.

The complaint also asserts that Mr. Bingham's daughter falls under NRS 281.501(8)(b) by way of her planned marriage to Commissioner Maxfield's son. However, Commissioner Maxfield's son and Mr. Bingham's daughter were not married at the time the vote took place. Because the two were not married at the time of the vote, neither Mr. Bingham's daughter nor Mr. Bingham fall into the categories enumerated in NRS 281.501(8). It does not, in fact, appear that Commissioner Maxfield had a commitment in a private capacity to the interests of others as defined by statute. Accordingly, under the particular facts and circumstances of this case, there does not appear to be credible evidence to support a violation of NRS 281.501(2), nor does it appear that Mr. Maxfield was required to disclose the pre-marital relationship pursuant to NRS 281.501. However, he can be commended for avoiding the appearance of impropriety by exceeding the standards placed upon him by statute.

Assuming, for the sake of argument, either that the two children were married at the time of the vote or that their relationship falls within NRS 281.501(8)(e), the question then becomes whether the independence of judgment of a reasonable person in Commissioner Maxfield's situation would be materially affected pursuant to NRS 281.501(2). NRS 281.501(2) instructs that it must be presumed that the independence of judgment would not be materially affected where the resulting benefit to himself or to his commitment in a private capacity to the interests of others is not greater than that accruing to any other member of the general business, profession, or occupation.

There is no evidence within the record, either submitted with the complaint or uncovered in the investigation, that Commissioner Maxfield or his son would benefit from participation in and approval of the zone change. Consequently, the statutory assumption would be to disclose sufficient information about the commitment in a private capacity and to participate in the vote. This is exactly what Commissioner Maxfield did.

Therefore, the Executive Director finds no credible evidence to substantiate a potential violation of NRS 281.501(2). Accordingly, the Executive Director recommends the panel find just and sufficient cause does not exist for the Commission to hold a hearing and render an opinion regarding whether Mr. Maxfield violated the provisions of NRS 281.501(2).

***Allegations regarding NRS 281.501(3):***

The provisions of NRS 281.501(3) mirror the statutory abstention provisions contained in NRS 281.501(2); however, the provisions are specifically placed on members of a city or county planning commission in a county whose population is 400,000 or more. Commissioner Maxfield is a member of the Clark County Commission, not a city or county planning commission. Thus, NRS 281.501(3) is not applicable to this specific set of facts and circumstances.

Therefore, the Executive Director recommends no credible evidence exists to substantiate a potential violation of NRS 281.501(3). Accordingly, the Executive Director recommends the panel find just and sufficient cause does not exist for the Commission to

hold a hearing and render an opinion regarding whether Mr. Maxfield violated the provisions of NRS 281.501(3).

***Allegations regarding NRS 281.501(4):***

In the *Woodbury* opinion, the Commission set forth the criteria by which public officers must disclose private interests which might tend to conflict with their public duties. The Commission noted that this is a broad disclosure requirement that serves to show the appropriate separation between the public and private interests of the public officer. The Commission ruled that public officers must disclose sufficient facts and details so as to inform the public of the private interests in order to protect the public from a decision based on these interests.

On July 2, 2003, Commissioner Maxfield publicly disclosed that his son was engaged to the daughter of Jay Bingham, the applicant on the zone change application at issue. As guided by the *Woodbury* opinion, the disclosure must be of sufficient detail so as to fully inform the public of the private interests involved so that the public is protected from a decision based solely or in part on those interests. Even according to person who filed the complaint, Commissioner Maxfield's disclosure was sufficient enough to make the public aware of the private commitment. The complaint acknowledges Commissioner Maxfield's disclosure and credits him with making this disclosure. The *Woodbury* opinion provides the disclosure must set forth the facts and circumstances that give rise to the type of relationship as described in NRS 281.501(8), which gives rise to the potential for conflict between public and private interests. Here, Commissioner Maxfield disclosed sufficient information to inform the public of the potential conflict, as the disclosure itself triggered the submission of complaint. It appears Mr. Maxfield followed statutory guidelines, the advice of his legal counsel, and the previous opinions (specifically the *Woodbury* opinion) of the Commission on Ethics. There is no evidence within the record to support any other conclusion. That the person who filed the opinion disagreed with Mr. Maxfield's self-analysis and decision to participate in the vote is unfortunate; however, the disagreement of a constituent is not credible evidence of a statutory violation, especially given the facts and circumstances of this case.

Therefore, the Executive Director recommends no credible evidence exists to substantiate a potential violation of NRS 281.501(4). Accordingly, the Executive Director recommends the panel find just and sufficient cause does not exist for the Commission to hold a hearing and render an opinion regarding whether Mr. Maxfield violated the provisions of NRS 281.501(4).

**H. CONCLUSION:**

The Executive Director hereby recommends the panel find just and sufficient cause does not exist for the Commission to hold a hearing and render an opinion on the allegations that the subject violated NRS 281.501(2), NRS 281.501(3), or NRS 281.501(4), and further that the allegations be dismissed.

**DATED:** July 22, 2005

Stacy M. Jennings  
**STACY M. JENNINGS, MPA**  
**EXECUTIVE DIRECTOR**